IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1734 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL RAJUBHAI DAHYABHAI
Versus
THE STATE OF GUJARAT

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Appearance :
MR AMRISH K PANDYA for Appellant
MR S.S. PATEL APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 09/10/2006

ORAL JUDGMENT

1 This Appeal is preferred under Section 374 (2) of the

Code of Criminal Procedure, 1973 and is directed against the judgment and order dated 25th of August, 2006, delivered by Special Judge, Mehsana, in Special Electricity Case No. 19 of 2005, by which the present appellant was convicted for the offence punishable under Section 135(1) of the Indian Electricity Act, 2003 and was sentenced to undergo simple imprisonment of two years and to pay fine of Rs. 5,000/- in default to undergo simple imprisonment of three months.

2 As per the brief facts of the case, on 8th of April, 2005, a mass checking programme was undertaken for the theft of electricity by Mehsana City Sub-Division and in pursuance of this programme at village Hirpura checking was made by Junior Engineers Mr. Jagjivanbhai Kasirambhai Patel, Mr. A. A. Patel and other persons of staff. They went together first at Vasai and in pursuance of the orders for mass checking, they visited villages Tatosan, Pamol, Hirpura, etc. At village Hirpura, checking of the shop of the appellant was done and it was found that straightway from electric pole the supply was extracted to his shop situated nearby through a stapled wire and the electric power was utilized without appellant being consumer and without meter being provided to the appellant. The name of the shop was Shahil Pan Parlour. The load was ascertained to be 985. In shop, one person was found and noticing the checking squad, he ran away and by witnesses he was identified in the court to be the appellant. The

checking squad executed a rojkam at the place, which is placed at Exhibit-16 and signed by seven staff members of the checking squad. The muddamal wire by which the supply was straightway extracted from pole was seized by the squad, which was produced in the court by the witnesses and thereafter a bill of Rs. 33,594/- was preferred against the appellant as supplementary bill, which came to be revised to Rs. 1,446.35ps vide Gujarat Vij Company Limited letter dated 28th of February, 2006. The said letter is placed at Exhibit-19. On 16th of April, 2005, the Deputy Engineer, Gujarat Electricity Board, Vijapur Sub-Division, preferred a complaint before Police Inspector, Sabarmati Police Station, which was registered as Sabarmati Police Station Crime Register No. 226 of 2005 and was investigated by one Makshibhai Rupabhai Bhagor. FIR is placed on record at Exhibit-20. After investigation, a charge sheet was submitted against the appellant and Special Judge framed charge against the appellant on 2nd of March, 2004, vide Exhibit – 6, to which the appellant pleaded not guilty and, hence, prosecution examined as many as five witnesses. PW-1 Ramanbhai Patel, who preferred complaint, is examined at Exhibit-15, but he had no personal knowledge about the checking and he preferred a complaint upon a report submitted to him. PW-2 Jagjivanbhai Kasirambhai Patel is examined at Exhibit- 23 and PW-3 A. A. Patel is examined at Exh-24 are the Junior Engineers, who participated in checking squad and deposed about the incident. PW-4 Bharatkumar Chhanalal Bhavsar was a person accompanying the

checking squad and his deposition is recorded at Exhibit – 25. PW-5 Maksibhai Rupabhai Bhagora is Investigating Officer, who is examined at Exhibit – 27.

3 In addition to this, rojkam in original is placed at Exh-16, supplementary bill is placed at Exhibit-17, at Exhibit-19 revised bill is placed. All these documents are produced on record by the prosecution.

4 On evidence being over, a further statement under Section 313 of the Criminal Procedure Code of the appellant was recorded, in which he denied the incident in toto except that he admitted that Shahil Pan Parlour was his rented premises and was in his possession. Lastly, he explained that a false case had been filed against him and he was not present when alleged checking was made.

5 After hearing both the sides, the learned Special Judge delivered the judgment and order impugned in this Appeal.

6 At the admission stage of this Appeal, Record and Proceedings from the Trial Court is called for and copies of necessary papers are provided to learned APP. The matter, therefore, was heard finally.

7 Learned Advocate for the appellant restricted his contention to the quantum of the sentences and submitted that earlier before one week of the present incident, a raid was carried out at the premises of the appellant, for which a bill of about Rs. 33,000/- was preferred and a criminal case also came to be filed against the present appellant for the offence punishable under Section 135 of the Indian Electricity Act. It is submitted that by virtue of Section 152 of the Electricity Act, 2003, the amount of the bill was paid by the appellant and the offence was compounded and the appellant was acquitted. The present raid has been carried out a week thereafter. It is submitted that on first conviction of the accused under Section 135 of theft of electricity when the load exceeds 10 KW the punishment provided for is the fine not less than three times the financial gain on account of such theft of electricity and the offences are made punishable with imprisonment for a term which may extend to three years or with fine or with both. It is submitted that in the facts and circumstances of the case, the quantum of sentence is required to be reduced. It is submitted that the appellant is bachelor and he is the only offspring of his parents. It is submitted that his mother, who is aged, resides with him and she is suffering from tuberculosis. It is submitted that there is agricultural land and he and his mother are maintained from the labour work of agriculture. It is submitted that earlier also when his rented premises was raided and checked, he had paid the amount of supplementary bill and had compounded the offence. It

is submitted that there are no antecedents so far as the appellant is concerned.

8 Learned APP Mr. S.S. Patel was heard in respect of the above said contention raised by learned Advocate for the appellant.

9 Having heard learned Counsels for the parties in respect of quantum of punishment, which is the only contention raised by learned Advocate for the appellant, and going through the record, it is clear that Section 135 of the Electricity Act provides punishment of imprisonment for a term which may extend to three years or with fine or with both. Then proviso of Section 135 stipulates the amount of fine in case of load exceeding 10 KW and not exceeding 10KW. In the present case, the load is exceeding 10KW and, hence, proviso (ii) of Section 135 would be applicable, and the amount of fine would be not less than three times the financial gain on account of such theft of electricity on first conviction.

10 Now, it is an admitted fact that earlier to the present incident, a checking was made at the Parlour of the appellant, wherein he was found committing theft of electric supply, and for which a supplementary bill of about Rs. 33,000/- was preferred upon the appellant as well as a prosecution was also launched against the appellant under Section 135 of the Electricity Act. However, on that

occasion, under Section 152 of the Electricity Act, the appellant paid the amount of supplementary bill to the Board and the prosecution ended in compounding of offence. Pertinent it is to note that, sub-section (iii) of Section 152 of the Indian Electricity Act, 2003, makes it clear that compounding of the offences, would amount to an acquittal of the accused within the meaning of Section 300 of the Code of Criminal Procedure, 1973. Meaning thereby that, by all means, the present conviction would be the first conviction under the Electricity Act so far as the appellant is concerned. Now, as provided aforesaid, on conviction, the appellant may be punished for the imprisonment to the extent of three years or with fine or with both. The amount of fine is provided for in proviso of Section 135 of the Electricity Act, 2003 varying by the first conviction and second conviction and taking into consideration the financial gain obtained by the accused in the theft of electricity.

11 Exhibit-19 makes it very clear that the financial gain which the appellant derived from the theft of electricity is to the tune of Rs. 1,446.35 ps. Meaning thereby that, the appellant on first conviction may be fined, but the same shall not be less than three times the financial gain on account of such theft of electricity. In addition to this, he may also be sentenced to undergo imprisonment of a term which may extend to three years. Conjoint reading makes it clear that, in the present case, the appellant may be sentenced with imprisonment as aforesaid or with fine not less than three

times as aforesaid or with both.

12 Now having regard to the mitigating circumstances as pleaded by learned Advocate for the appellant, it appears that earlier the appellant has paid the bill of about Rs. 33,000/-, the appellant has personal circumstances which requires consideration for modification of sentences. When law provides the sentences of either imprisonment or with fine or with both in the cases of this nature, when grounds are made out for reduction of sentences, the ends of justice would be met, if the appellant is sentenced to fine only instead of sentence of imprisonment and fine. It must be remembered that the amount of fine would be three times than the financial gain obtained by the appellant. In this case, the financial gain is Rs. 1,446.35ps and he has been fined for Rs. 5,000/- which is more than three times the financial gain obtained by the appellant. The appellant has already paid the amount of fine. In this view of matter, it appears just and proper to modify the sentence awarded by the Trial Court to the extent that instead of sentence of imprisonment which is two years, and fine, the appellant may be sentenced to fine only.

13 In the above view of matter, this Appeal is partly allowed to the extent of modification and reduction of sentence. The appellant is sentenced to fine of Rs. 5,000/- only for the offence punishable under Section 135(1) of the Electricity Act, 2003 instead

of sentence of imprisonment of two years and fine of Rs. 5,000/- as imposed by the Trial Court. The appellant has deposited the amount of fine before the Trial Court. Rest of the Appeal, except above said modification and reduction of sentence, stands dismissed. The orders passed by the Trial Court about the muddamal, etc. stands uninterfered with. Record and Proceedings be transmitted to the Trial Court immediately. DS permitted today.

(J.R. VORA, J.)

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